

## APPENDIX C



# CITY OF GILROY AGRICULTURAL MITIGATION PROGRAM

### Contact

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Adopted May 3, 2004

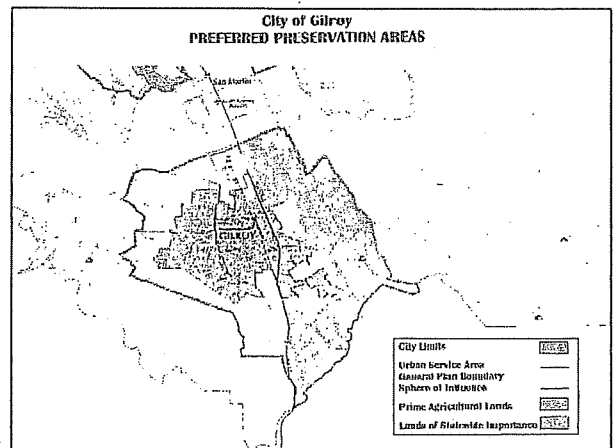
### *The main components of the City of Gilroy's Agricultural Mitigation Policy are:*

❏ **Policy Application and Requirements:** The policy requires mitigation for the conversion of agricultural lands to urban uses at a 1:1 replacement ratio. There are three methods of mitigation established when mitigation is necessary. The policy establishes the criteria for determining when mitigation would be required (see table on back of this page), what lands are acceptable for preservation, how in-lieu fees would be determined, and requires the in-lieu fees to be used for the establishment of permanent agricultural conservation easements on prime farmlands around the Gilroy area.

#### Mitigation Methods

1. Purchase and dedication of **equal amount of ag lands** being converted; or
2. Purchase and dedicate **conservation easements for equal amount of ag lands** being converted; or
3. Payment of **in-lieu fees** to be used for obtaining conservation easements. *Fees based on recent appraisals in preferred preservation area.*

❏ **Farmland Preservation Areas:** The policy establishes a preferred area for the preservation of agricultural lands. This area is located within the City's Sphere of Influence and outside the General Plan 20-year boundary, east of Highway 101 and south of Masten Avenue. This area was chosen because it is the greatest concentration of "Prime" and "Statewide Important" farmland remaining in the south county area. Lands preserved can be located outside of the preferred preservation area when mitigation occurs in conjunction with a specific plan process or when approved by the City Council.



❏ **"Right-to-Farm" Disclosures:** The policy also requires the disclosure of nearby agricultural activities in deeds for any lands subdivided and developed within 1,000 feet of the preferred preservation area. Overall, this would apply to only a few areas in the City. However, it establishes agriculture as a priority in the community and gives forewarning to those areas where it could apply.

❏ **Agricultural Buffers:** The policy requires new developments to establish a minimum of 150 feet for an agricultural buffer adjacent to permanent agricultural and open space areas. Again, this would apply to only a few areas in the City. But the uses in these buffer areas would be limited to reduce potential conflicts between agricultural and non-agricultural uses.

❏ **Possible Exemptions:** The policy allows for certain exemptions from the 1:1 mitigation ratio as follows:

- Up to 100 feet in width of a permanent agricultural buffer area.
- Public facilities established in the City's General Plan or Parks Master Plan.
- Lands dedicated for public right-of-ways that service the overall community, not just the specific development.



*PLANNING DIVISION*  
**COMMUNITY DEVELOPMENT DEPARTMENT**

**RE:** CITY ACTIONS FOR IMPLEMENTATION OF THE AGRICULTURAL  
MITIGATION POLICY

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Attached is a hand-out prepared to provide information on how an applicant would comply with any mitigation requirements for the Agricultural Mitigation Policy. The first two mitigation options would be completed between the applicant and either the Santa Clara Valley Land Trust or Open Space Authority with confirmation of mitigation provided to the City upon completion of their negotiations.

The third option requires the City to establish what the in-lieu fees will be for those applicants choosing the in-lieu fee option. The steps needed to establish and maintain those fees are:

- ✦ Obtain three appraisals on lands located within the "preferred preservation areas." These can be obtained from recent appraisals prepared by the Santa Clara Valley Land Trust or the Open Space Authority, or the City can complete the appraisals.
- ✦ Utilizing the lowest bid, establish the in-lieu fee for a maximum two-year period. The in-lieu fee shall also include, on a cost recovery basis, the fees for administrative and transactional costs.
- ✦ Establish an escrow account where the fees will be maintained and made available for use by a City approved agency for the purpose of preserving agricultural lands in the "preferred preservation areas."
- ✦ Establish the criteria for use of the in-lieu fees and how the fees will be distributed to the City approved agencies.



# CITY OF GILROY AGRICULTURAL MITIGATION PROGRAM IMPLEMENTATION

Agricultural Policy Adopted May 3, 2004

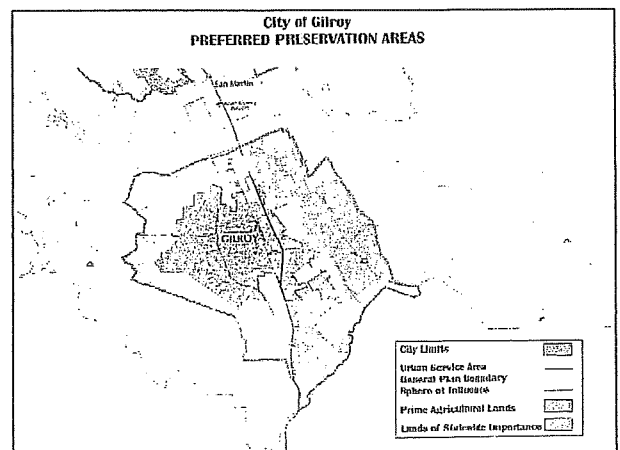
Through the CEQA process, it will be established how many acres of agricultural lands that a developer is converting to an urban use would be required to mitigate, if mitigation is necessary. At the time of first Planning approval (USA, Annexation, GPA or Zone Change), the applicant will enter into a deferred agreement to establish the method and timing that actual mitigation will occur. Mitigation shall be based on the 1:1 replacement ratio for all agricultural lands deemed a significant loss. If the first Planning approval is at the Tentative Map or Architecture & Site Review stage, the mitigation will occur prior to approval of the Final map or the Architecture & Site Review.

*The steps for implementation of the three mitigation options are:*

## Mitigation Methods

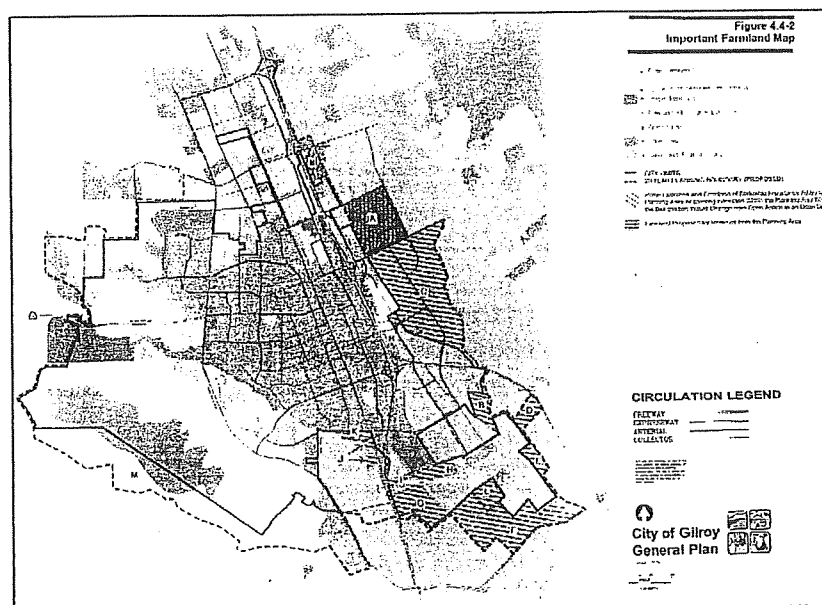
1. Purchase and dedication of **equal amount of ag lands** being converted; or
2. Purchase and dedicate **conservation easements for equal amount of ag lands** being converted; or
3. Payment of **in-lieu fees** to be used for obtaining conservation easements.  
*Fees based on recent appraisals in preferred preservation area.*

- ❑ **Dedicate equivalent Ag lands:** Working in coordination with a City approved agency (Santa Clara County Land Trust or Open Space Authority), the applicant may dedicate an equal number of acres and quality of agricultural lands to the City approved agency after placement of conservation easements on the land. The applicant then must provide evidence of the recorded transactions to the City as verification of compliance with the required mitigation.
- ❑ **Dedicate equivalent Conservation Easements:** Working in coordination with a City approved agency (Santa Clara County Land Trust or Open Space Authority), the applicant may negotiate with the property owner of an equal amount and quality of agricultural lands that are currently in agricultural production to place conservation easements on the property to be maintained in perpetuity. These conservation easements would be dedicated to the City approved agency for on-going monitoring.
- ❑ **Payment of an In-Lieu Fee:** No more than every two years, the City will obtain a minimum of three appraisals for the purchase of development rights on land within the "preferred" preservation area on the south and east sides of Gilroy. The City shall establish an in-lieu fee based upon the lowest of the appraisals on a per acre basis along with any normal and customary administrative and transactional fees on a cost recovery basis. These fees would be maintained by the City in an escrow account and made available for City approved agencies to preserve agricultural lands in the preferred preservation areas. The applicant may pay this in-lieu fee for each acre that is required as mitigation instead of mitigating through the previous two methods.

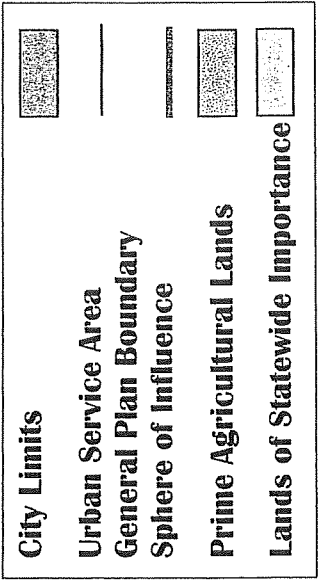


# AGRICULTURAL MITIGATION POLICY APPLICABILITY

<b>GENERAL PLAN EIR - Additional Agricultural Mitigation Measures (4.4.a)</b>		
Is the site located within an area identified in the GP EIR as being converted to urban designation (see hatched areas in Figure 4.4-2 below)	Yes, subject to mitigation through the Ag Policy.	No, continue to next question
Is the site designated as farmland that is either of prime or statewide importance according to the State Department of Conservation Important Farmland Mapping?	Yes, continue to CEQA Review	No, not subject to policy
<b>California Environmental Quality Act (CEQA) Review</b>		
Does it score as significant based on the California Department of Conservation Agricultural Land Evaluation and Site Assessment (LESA) model?	Yes, mitigation through the Ag Policy is required*	No, continue to next question
Are there any Williamson Act Contracts in place on the property?	Yes, significant unavoidable impact*	No mitigation required, less than significant impact



\* CEQA requires all feasible mitigation for significant unavoidable impacts. Upon certification of the General Plan EIR, the City Council declared that an Agricultural Mitigation Program is deemed feasible mitigation. Therefore significant impacts as determined under CEQA would be subject to the City's Agricultural Mitigation Policy.





# AGRICULTURAL MITIGATION POLICY

## City of Gilroy

Adopted May 3, 2004

### **Section 1.00 Statement of Intent**

It is the intent of this policy to set forth the specific criteria and guidelines, consistent with the City's General Plan policies on agriculture, to enable the continued viability of agriculture and agri-tourism in the Gilroy area through:

- (a) Recognition of agriculture's significant contribution to the local economy;
- (b) Protection of agricultural lands from urban encroachment;
- (c) Preservation of agricultural lands as a natural buffer between Gilroy and surrounding communities; and
- (d) Appreciation for the role of agricultural lands in enhancing Gilroy's semi-rural, character.

### **Section 1.01 Definitions**

#### **Agricultural Land or Farmland:**

Those lands within the City of Gilroy's General Plan 20-year boundary that are deemed to meet the Thresholds of Significance for CEQA purposes, or those that are designated "Prime" or lands of "Statewide Importance" by the State Department of Conservation as shown on their latest "Important Farmland Map." This also includes land that has been used for agriculture but has not been irrigated for six years or more as defined by the California State Farmland Mapping Program.

#### **Agricultural Mitigation Land:**

Agricultural land encumbered by a farmland deed restriction, a farmland conservation easement or such other farmland conservation mechanism acceptable to the City.

#### **Agricultural Operations:**

Any agricultural activity, operation, or facility including but not limited to, the cultivation and tillage of the soil, dairying, the production, irrigation, frost protection, cultivation, growing, harvesting, and processing of any commercial agricultural commodity, including viticulture, apiculture or horticulture, the raising of livestock, fur-bearing animals, fish or poultry, agricultural spoils areas, and any practices performed by a farmer or on a farm as incidental to or in conjunction with such operations, including the legal application of pesticides and fertilizers, use of farm equipment, storage or preparation for market, delivery to storage or to market, or to carriers for transportation to market.

#### **Farmland Conservation Easement:**

An easement over agricultural land for the purpose of restricting its use to agriculture. The interest granted pursuant to a farmland conservation easement is an interest in land, which is less than fee simple. However, the farmland conservation easement is permanent.

Farmland Deed Restriction:

The creation of a deed restriction, covenant or condition, which precludes the use of the agricultural land subject to the restriction for any non-agricultural purpose, use, operation or activity. The deed restriction shall provide that the land subject to the restriction will permanently remain agricultural land.

Natural Trail:

An unimproved trail.

Preferred Preservation Area:

The agricultural lands located in the Santa Clara County agricultural preserve, specifically the agricultural lands located outside of Gilroy's General Plan boundary and within Gilroy's Sphere of Influence (See Attachment 1 "Preferred Preservation Areas").

Wildlife Habitat:

A wildlife sanctuary that provides water, food shelter and places to raise young for native wildlife.

Wildlife Sanctuary:

An area where native wildlife are safe from people or non-native animals such as dogs and cats.

**Section 1.02 Agricultural Mitigation Requirements**

(A) Those lands that require agricultural mitigation are identified in Figure 4.4-2 and Table 4.4-5 of the City of Gilroy's General Plan 2020 EIR (attached.) Mitigation requirements are not limited to these lands but would include the loss of agricultural lands due to the conversion to urban uses (including actions such as USA amendments, extension of services, or annexation) when the following criteria are met:

- (1) The City of Gilroy shall require agricultural mitigation for the loss of agricultural lands due to conversion to urban uses for land as defined as "prime farmland or farmland of "Statewide Importance" in *Section 1.01 Definitions*. Mitigation shall only be required for that portion of the land that no longer will be designated agricultural land. One time as many acres of agricultural land shall be protected as was changed to a non-agricultural zoning classification (1:1 ratio of land); and
- (2) The project site is deemed a significant impact based upon the completion of a Land Evaluation and Site Assessment Model (General Plan EIR Appendix F-2) as administered through the standard CEQA process during project review.
- (3) With the following exceptions:
  - a. A maximum of 100 feet of the land that will remain in a permanent agricultural buffer; or

- b. An area intended for city public facilities, as set forth in the City's General Plan or Parks Master Plan, that is adjacent to City roads and with nearby city infrastructure that can serve the project. Such public facilities would include public parks and/or public recreational facilities; permanent natural open space that is not disturbed by the development; trails and developed open space that is open to the public; and public school sites.
  - c. Lands dedicated for lanes, median islands, bike lanes, and pedestrian facilities which qualify for Traffic Impact Fund reimbursement or funding and are not required solely due to the proposed development project, shall not be included in the acre count for agricultural mitigation. Typically these lands include the median and all sections of the roadway except the first travel lane along the frontage and the parking/shoulder lanes for arterials. For expressways all lanes including parking, bike, and shoulder plus pedestrian facilities are included. The lands for these lanes, median islands, bike lanes, and pedestrian facilities are for the common good of the community and are not considered specific to the development.
- (4) Specific plan areas may provide agricultural mitigation on-site as established in the specific plan if approved by the City Council. All proposed mitigation in the specific plan must be consistent with the intent of the General Plan EIR Mitigation Measure 4.4-A and this policy as feasible mitigation for the loss of agricultural lands. Additional mitigation acreage may be required outside the specific plan area to meet the 1:1 ratio mitigation requirement.
- (B) Mitigation may be accomplished with one of the following three options and the options shall include all costs to cover program administration and monitoring of established easements:
- (1) Mitigation 1: Purchase an equal amount of land (1:1 ratio) of agricultural land within the "Preferred Areas" (see *Section 1.01 Definition*) and the transfer of the ownership of this land to the Open Space Authority or other City-approved agency.
  - (2) Mitigation 2: Purchase of development rights to a 1:1 ratio on agricultural land within the "Preferred Areas" and the transfer of ownership of these rights to the Open Space Authority or other City-approved agency. The purchase value of this agricultural conservation easement will be based upon the appraisal of purchasing development rights and not fee-title rights.
  - (3) Mitigation 3: Payment of an in-lieu fee will be based upon the lowest appraisal of purchasing development rights in the "Preferred Areas."
    - a. The in-lieu fees will include all normal and customary administrative and transactional fees charged on a cost recovery basis.
    - b. The in-lieu fees will be maintained by the City in an escrow account and adjusted no more than every two years based on appraisals from the "Preferred Areas" (Attachment 1).

- (C) At the time of any initial land use application approval, the applicant shall enter into a deferred payment or dedication agreement establishing the specific criteria and timing for implementing any required mitigation. This deferred agreement shall be recorded with the County Recorder's Office against the proposed project property. All required mitigation must be completed prior to final map approval, or if no map is required, no later than issuance of the first building permit.
- (D) Lands deemed acceptable for preservation are:
- (1) Those lands designated as "Prime" or of "Statewide Importance" by the State Department of Conservation in the Preferred Areas as defined in Section 1.01 Definitions; and
  - (2) Has an adequate water supply to support the historic agricultural use on the land. The water supply for the land shall be protected in the farmland conservation easement, the farmland deed restriction or other document evidencing the agricultural mitigation.
- (E) Programs with those City-approved agencies handling conservation easements in the "Preferred Areas for Preservation (*Sec. 1.01 Definitions*)", shall include the financial responsibility by the developers for program administration, outreach to landowners and monitoring of established easements. An additional nominal fee to cover these items, the amount of which shall be established by City policy, shall be built into the in-lieu fee outlined in *Section 1.02 (B)*.

### **Section 1.03 Right to Farm Deed Restrictions**

- (A) All lands located within one thousand (1,000) feet of any agricultural lands deemed for preservation, as shown on the Farmland Preservation Area map (Attachment 1), shall be subject to the placement of a "right to farm" deed restriction that conforms with both Santa Clara County restrictions as well as the State of California real estate transfer disclosure requirements as a condition of approval for any discretionary permit.

- (B) The deed restriction shall include the following wording:

"You are hereby notified that the property you are purchasing is located within 1,000 feet of agricultural land, agricultural operations or agricultural processing facilities. You may be subject to inconvenience or discomfort from lawful agricultural operations. Discomfort and inconvenience may include, but are not limited to, noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period. One or more of the inconveniences described may occur as a result of agricultural operations, which are in compliance with existing laws and regulations and accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector.

Lawful ground rig or aerial application of pesticides, herbicides and fertilizers occur in farming operations. Should you be concerned about spraying, you may contact the Santa Clara County Agricultural Commission."

- (C) The Right to Farm Deed Restriction shall be included in all subsequent deeds and leases for this property and shall conform with both Santa Clara County restrictions as well as the State of California real estate transfer disclosure as defined by this policy.

**Section 1.04 Agricultural Buffer**

- (A) To minimize future potential conflicts between agricultural and non-agricultural land uses, all new developments adjacent to designated agricultural, agricultural preserve, agricultural open space, greenbelt/agricultural buffer areas shall be required to provide an agricultural buffer/agricultural transition area.
- (B) The agricultural buffer/agricultural transition area shall be a minimum of one hundred fifty (150) feet measured from the edge of the agricultural, agricultural preserve, greenbelt area. No public access shall be allowed in this transition area due to the potential for complaints about and exposure to the dust and spraying associated with agricultural activities.
- (C) This agricultural buffer/agricultural transition area shall be comprised of two components:
- (1) A one hundred (100) foot minimum wide agricultural buffer zone located adjacent to the agricultural lands or greenbelt area. The following uses in the one hundred (100) foot or greater agricultural buffer area shall be limited to:
    - i. Native plants, trees or hedge rows
    - ii. Drainage channels, storm retention ponds, natural areas such as creeks or drainage swales
    - iii. Railroad tracks or other utility corridors
  - (2) A fifty (50) foot agricultural transition area located between the one hundred (100) foot minimum agricultural buffer area and any new development. The following uses are allowed in the fifty (50) foot agricultural transition area:
    - i. Native plants, trees or hedge rows
    - ii. Drainage channels, storm retention ponds natural areas such as creeks or drainage swales
    - iii. Bike paths, benches, lighting, trash enclosures and fencing
    - iv. Other non-residential uses determined by the Planning Commission to be consistent with the use of the property as an agricultural buffer; such as natural trails, bike paths, wildlife habitats, wildlife sanctuaries, or community service facilities like detention basins.
- (D) The agricultural buffer/transition area shall be constructed by the developer of any land adjacent to agricultural uses, subject to approved plans by the Community Development Department. This area shall be maintained by the developer according to standards approved by the City until the area is dedicated to and accepted by the City or other City approved agency at which time they shall be responsible for maintenance.



## APPENDIX D

## MORGAN HILL GENERAL PLAN

## Agriculture

Agriculture has been important to the city as an industry and employment generator throughout its history, in addition to contributing to the city's rural character. Agricultural development policies intend to retain the historic agricultural character of lands surrounding Morgan Hill, and to minimize conflicts between urban development and agricultural uses.

Supporting agriculture requires finding innovative ways to help farming and ranching operations become and remain competitive in an increasingly marginal economic environment.

## Goal 3. A viable agricultural industry

## Policies

- 3a. Support programs and techniques, including conservation easements and purchase of development rights to encourage the retention of agricultural activities and to minimize conflicts in the transition from agriculture to urban uses.
- 3b. Support agricultural activity by encouraging agriculture-related industry, commercial uses, and community events within the urban area.
- 3c. Support significant agricultural activity within the Sphere of Influence by providing a market for agricultural products (e.g., farmer's market), and decreasing the costs associated with agriculture by allowing such uses to occur in the Sphere of Influence
- 3d. Support use of farming cooperatives within agricultural buffer areas.
- 3e. Support programs to encourage purchase of locally produced agricultural products.



- 3f. Support programs to foster agricultural education.
- 3g. Continue to support the long-term maintenance of agricultural land uses and agriculture as an economic enterprise in

South County, since it contributes to the local economy, helps to delineate urban boundaries, and is a productive use for land which is not immediately planned for urban development. (SCJAP 14.00)

- 3h. Take positive action to encourage agriculture by supporting policies favorable to agriculture. (SCJAP 14.01)
- 3i. Protect agricultural lands from encroachment by incompatible land uses, including urban residential development. (SCJAP 14.02)
- 3j. Maintain the economic viability of agriculture using a variety of methods, such as: contiguous urban development, the designation as agricultural lands those lands which are outside of planned urban areas, minimum lot size designations in agricultural areas, the limitation of land uses in agriculturally-designated areas to agriculture and uses necessary for the support of agriculture, and the encouragement of direct marketing methods. (SCJAP14.02)

- 3k. Establish areas for the permanent preservation of agricultural lands and programs to accomplish that objective, such as exclusive agricultural zoning, transfer of development rights (TDR) programs, and right-to-farm legislation. (SCJAP 14.03)
- 3l. Preserve some prime agricultural lands in South County (particularly within the prime agricultural areas east and south of Gilroy) for agricultural use through appropriate agricultural land preservation tools, such as exclusive agricultural zoning, transfer of development rights (TDR) programs, and right-to-farm legislation. (SCJAP 14.04)
- 3m. In the County, support continuation of the A-20 and A-40 minimum lot size designations in the agricultural area. (SCJAP 14.05)
- 3n. Support the expansion of the "uses compatible with agriculture" category in County zoning ordinances and Williamson Act policies only when such additional uses will clearly contribute to the long-term viability of agriculture. (SCJAP 14.06)
- 3o. Plan for further urban growth to occur in areas which will avoid encroachment into those agricultural lands with the greatest long-term potential to remain economically viable. (SCJAP 14.07)
- 3p. Convert agricultural land that has been designated for urban growth in an orderly manner to retain the stability and viability of remaining agricultural lands as long as possible. (SCJAP 14.08)
- 3q. Support policies of the Local Agency Formation Commission (LAFCO) which would guide urban development away from those agricultural areas with the greatest potential for long-term economic viability. (SCJAP 14.10)

#### **Actions**

- 3.1 Use a variety of techniques to protect agricultural land, including land use regulation, urban development policy, conservation easements (with matching grant funds from appropriate agencies, where possible), and transfer or purchase of development rights.
- 3.2 When new development is proposed adjacent to an existing agricultural operation, require the appropriate buffer to be provided from land within the proposed development.
- 3.3 Participate in direct marketing of locally produced agricultural products, as appropriate.
- 3.4 Wherever existing development patterns and existing and planned roads and other public facilities permit, concentrate urban development adjacent to existing developed areas in order to minimize the impact of development on agricultural land.
- 3.5 Use policies for Urban Service Area extensions and utility extensions to guide urban growth away from long-term agricultural areas. (SCJAP 14.09)
- 3.6 In order to separate agricultural from urban activities, and to minimize land use conflicts, establish buffers between viable agricultural areas and urban expansion areas, limiting activities in these buffer zones to uses which are compatible with both agricultural and urban activities. Specific uses should be defined through an open inter-governmental process. (SCJAP 14.11)
- 3.7 Determine the range of activities permitted in agricultural areas of South County through an intergovernmental process, where the range of allowed uses reflect the activities which are necessary to promote the continued economic viability of agriculture in South County. (SCJAP 14.12)